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No. 06-1082

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA,
Petitioner,

v.

DAVID LEE MOORE,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

BRIEF OF TEXAS, ARKANSAS, COLORADO, IDAHO, IOWA, MAINE, MICHIGAN, NEW HAMPSHIRE, OREGON, PUERTO RICO, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, AND WYOMING AS *AMICI CURIAE* ON BEHALF OF PETITIONERS

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QUESTION PRESENTED

Does the United States Constitution require the suppression of evidence obtained when a police officer makes an arrest based upon probable cause, if the arrest violates a provision of state law?

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INTEREST OF AMICI

The *amici* States appear as *amici curiae* in support of Petitioner, Commonwealth of Virginia. SUP. CT. R. 37.4.

The *amici* States have a significant interest in this case because each State has the authority to regulate its own law enforcement, so long as its laws comply with the federal Constitution. Although States may individually choose to go beyond the federal Constitution's requirements for regulating searches, seizures, and arrests, the *amici* States all have an interest in a clear articulation of their ability to determine their own penalties for such regulations.

SUMMARY OF ARGUMENT

This case concerns the States' authority to regulate arrests and their corresponding responsibility to define their own remedies. The overwhelming majority of state supreme courts and federal circuit courts to consider the issue have concluded that, where an officer has probable cause to arrest but violates some provision of state law in making that arrest, any state-law illegality does not implicate the federal Constitution. The Supreme Court of Virginia in the opinion below joined the Ninth and District of Columbia Circuits in finding that state law forms a basis for determining the reach of the Fourth Amendment—when state law is violated, the minority rule holds that the federal Constitution itself provides the remedy. This case presents a serious conflict among the lower courts that should be resolved.

ARGUMENT

I. THE COURT HAS NOT DECIDED WHETHER A VIOLATION OF STATE—NOT FEDERAL—LAW REGULATING ARRESTS RENDERS AN OTHERWISE-LAWFUL SEARCH INCIDENT TO THAT ARREST UNCONSTITUTIONAL.

The Court has clearly stated that the Fourth Amendment allows a search incident to a lawful arrest and that the Constitution—not state law—determines the reasonableness of a search; the Court has not, however, addressed whether a violation of a mere state-law rule requires a remedy rooted in the federal Constitution. As a result, a conflict has developed in the lower courts.

The Court has also held that when state law creates greater protections than those afforded by the federal Constitution, those protections are a matter of state law, not federal law. *Arkansas* v. *Sullivan* explained that, "while a State is free *as a matter of its own law* to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards, it may not impose such greater restrictions *as a matter of federal constitutional law* when this Court specifically refrains from imposing them." 532 U.S. 769, 772 (2001) (per curiam) (quoting *Oregon* v. *Haas*, 420 U.S. 714, 719 (1975)) (internal quotation marks omitted) (emphasis in original).

Moreover, state-law authorization for police activity is not by itself determinative of that activity's constitutionality: "Just as a search authorized by state law may be justified as a constitutionally reasonable one under [the Fourth A]mendment, so may a search not expressly authorized by state law be justified as a

constitutionally reasonable one." *Cooper* v. *California*, 386 U.S. 58, 61(1967). Indeed, "when such state standards [imposing higher standards than required by the federal Constitution] alone have been violated, the State is free, without review by us, to apply its own state . . . rule to such errors of state law." *Id.*, at 62 (emphasis added). Therefore, the relevant federal question is not whether the search violated state law, but whether the search was constitutionally reasonable in and of itself.

A search incident to an arrest based on probable cause is plainly constitutional under the Fourth Amendment. "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest *requires no additional justification* ." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973) (emphasis added);[1] *Commonwealth* v. *Moore*, 622 S.E.2d 253, 259 (Va. App. 2005) (en banc); *see also Michigan* v. *DeFillippo*, 443 U.S. 31, 35 (1979) ("The fact of a lawful arrest, standing alone, authorizes a search.").

To be sure, *Knowles* v. *Iowa*, 525 U.S. 113 (1998), found that a search of a car incident to a traffic stop for speeding was not constitutional under the *Robinson* rule. *Id.*, at 114. But *Knowles* does not address the question at issue here. Although the Iowa statute, as interpreted by Iowa courts, clearly authorized a full search incident to a traffic citation, Knowles was not in fact under arrest at

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1. Although *Robinson* specifically declined to address whether a search incident to a traffic citation would be appropriate, 414 U.S., at 237 n.6, Moore was under arrest when the search in question occurred.

the time of the search—he was arrested afterwards. *Id.*, at 116-18. The *Knowles* Court found that a traffic citation could not support a full incident search in the same way that a custodial arrest would have done. *See id.*, at 116-18. But in the instant case, police—rightly or wrongly—had already placed Moore under arrest before the challenged search occurred. *Commonwealth* v. *Moore*, 636 S.E.2d 395, 396 (Va. 2006). Thus, *Knowles* is not on point. *Knowles* addresses only the constitutionality of a full search incident to a mere traffic citation—not a search incident to arrest as at issue here.

Moreover, in *Atwater* v. *City of Lago Vista*, 532 U.S. 318 (2001), this Court upheld a statute that allowed a warrantless arrest for a misdemeanor in an instance in which officers had probable cause. *Id.*, at 325-26, 354. Significantly, the *Atwater* Court noted that "[i]f an officer has probable cause to believe that an individual has committed even a very minor offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Id.*, at 354. In *Moore*, precisely such a belief caused the officer to arrest Moore—police suspected he was driving with a suspended license. *Moore*, 636 S.E.2d, at 396. Thus, the very type of arrest that violated Virginia law in *Moore* was constitutional in *Atwater*. Although *Atwater* was silent as to whether a search incident to that arrest would be constitutional, the *Robinson* rule indicates that if the arrest was constitutional, the search would be likewise constitutional. *Cf. DeFillippo*, 443 U.S., at 40 (declining to suppress evidence obtained in a search

pursuant to an arrest under an ordinance that was later found unconstitutional).[2]

Thus, this Court has never directly decided the question of whether the Constitution requires suppression when an officer has probable cause to arrest, yet the arrest violates a state law. Lower courts would benefit from that clarification.

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2. *DeFillippo* noted in dictum that "[w]hether an officer is authorized to make an arrest ordinarily depends, in the first instance, on state law." 443 U.S., at 36. Yet *DeFillippo* did not present the question of an arrest pursuant to a state-law violation. *Id.*, at 36 ("Respondent does not contend . . . that the arrest was not authorized by Michigan law."). Rather, the case turned on the presence of probable cause, which is not disputed here. *Id.*, at 37-40. Similarly, *United States* v. *Di Re*, 332 U.S. 581, 593-95 (1948), suppressed the fruits of a search incident to an arrest that violated a New York statute, but that case has since been implicitly overruled. The Court has later squarely held that state-law authorization to arrest is not the determining factor for constitutional reasonableness. *See California* v. *Greenwood*, 486 U.S. 35, 43-44 (1988) (rejecting the proposition that "concepts of privacy under the laws of each State are to determine the reach of the Fourth Amendment" and refusing to suppress evidence from a search that was reasonable under federal law but violated state law because the Court had "never intimated . . . that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs"); *Elkins* v. *United States*, 364 U.S. 206, 223-24 (1960) (implicitly overruling *Di Re* by holding that "[t]he test [for admissibility of evidence] is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed").

II. THE MAJORITY OF STATE SUPREME COURTS AND FEDERAL CIRCUIT COURTS THAT HAVE CONSIDERED THIS QUESTION HAVE CONCLUDED THAT STATES CANNOT CREATE A FOURTH-AMENDMENT VIOLATION THROUGH STATE ARREST REGULATION.

A. State Supreme Courts in California, Colorado, Maine, Michigan, Nevada, North Carolina, and Ohio Have Deferred to Federal Constitutional Law to Define Fourth Amendment Rights.

The Supreme Court of Virginia stands alone among state supreme courts. It concluded in *Moore* that, because the arrest violated state law, it negated the existence of the probable cause to the arrest that allowed the search. *Moore*, 636 S.E.2d, at 400. In short, Virginia's highest court found that a state-law violation created a constitutional infirmity under the Fourth Amendment.

Every other state supreme court to address the question has agreed that the federal, not state, law defines the contours of the Fourth Amendment. The California Supreme Court in *California* v. *McKay*, 41 P.3d 59 (Cal. 2002), addressed precisely the question at issue in *Moore*, yet it reached the opposite conclusion. There, an officer stopped a bicyclist for an infraction of the state vehicle code, placed him under arrest—allegedly in violation of California law—and searched the cyclist incident to that arrest, finding methamphetamine. *Id.*, at 53. That court recognized that *Atwater* foreclosed the defendant's contention that the arrest violated the Fourth Amendment. *Id.*, at 63-64. But, unlike the Virginia Supreme Court, the California Supreme Court concluded

that a violation of state law in effectuating that arrest did not render that arrest illegal under the federal Constitution. *Id.*, at 65-66 ("Our determination of the validity of the search under the federal Constitution thus does not depend on whether it was authorized by state law or the law of the particular State in which the search occurs. . . . [T]he test is one of federal law . . . .") (internal citations omitted).[3]

Other state supreme courts have agreed—in the absence of any state constitutional protection that goes further than the Fourth Amendment—that when an arrest violates state law but not the federal Constitution, no exclusionary remedy is necessary. *See, e.g.*, *Colorado* v. *Hamilton*, 666 P.2d 152, 156-57 (Colo. 1983) (finding that an arrest for probable cause that violated a state statute did not violate defendant's constitutional rights under the state or federal Constitution and concluding that arrests that exceeded an officer's statutory authority were "not *per se* violations of constitutionally protected rights"); *Maine* v. *Jolin*, 639 A.2d 1062, 1064 (Me. 1994) (refusing to apply a *per se* rule that evidence obtained from an arrest that violated statutory jurisdictional boundaries would require application of the exclusionary rule); *Michigan* v. *Hamilton*, 638 N.W.2d 92, 96 (Mich.) (per curiam), *overruled on other grounds by Bright* v. *Ailshie*, 641 N.W.2d 587, 590 n.5 (Mich. 2002) (reasoning that "[t]he Fourth Amendment exclusionary rule only applies to constitutionally invalid arrests, not merely statutorily illegal arrests" and concluding that state statutory law did

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3. The California Supreme Court ultimately found that the arrest did not, in fact, violate state law as alleged. *Id.*, at 72.

not require suppression of the evidence); *North Carolina* v. *Eubanks*, 196 S.E.2d 706, 709 (N.C. 1973) (distinguishing, in the context of an arrest for a traffic stop that violated North Carolina law, between an "illegal" arrest and an "unconstitutional" arrest and holding that "nothing in our law requires the exclusion of evidence obtained following an arrest which is constitutionally valid but illegal . . . ."); *Ohio* v. *Droste*, 697 N.E.2d 620, 623 (Ohio 1998) (examining a traffic stop in which officers exceeded statutory authority and concluding that "absent a violation of a constitutional right, the violation of a statute does not invoke the exclusionary rule").

Indeed, the Nevada Supreme Court followed this reasoning even when its state constitution, not the federal Constitution, provided the exclusionary remedy. In *Nevada* v. *Bayard*, 71 P.3d 498 (Nev. 2003) (per curiam), an officer arrested Bayard for violating traffic ordinances and found illegal drugs on his person in a search incident to that arrest. *Id.*, at 500. The arrest, as in *Moore*, violated state law because the officer abused his discretion in declining to issue a citation under the circumstances. *Id.*, at 503. *Bayard* held that suppression of the evidence was appropriate under the Nevada Constitution, yet it still found that the arrest was legal under the Fourth Amendment. *Id.*, at 502-03; *see also Oregon* v. *Rodriguez*, 854 P.2d 399, 409 (Or. 1993) (holding that even if an arrest were invalid under the Oregon Constitution, "[b]ecause the arrest in this case did not violate the Fourth Amendment, the guns discovered in the subsequent

consent search were not subject to suppression under the Fourth Amendment").[4]

In each of these cases, state supreme courts declined to elevate their respective States' regulations to the level of federal constitutional law. This approach is consistent with that employed by the majority of federal circuit courts.

B. The First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits Have All Refused to Allow State-Law Violations to Render Illegal Otherwise-Lawful Conduct Under Federal Law.

The First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits have all held that when an officer has probable cause to believe a violation of the law has occurred and makes an arrest, the constitutionality of the arrest does not depend on compliance with state law that extends beyond what the Constitution requires. Although these cases involve a broad spectrum of arrests, the principle remains the same: A violation of state-arrest law does not create a violation of the Fourth Amendment.

The Eighth Circuit has reached this result in a case factually similar to *Moore*. In *United States* v. *Bell*, 54 F.3d 502 (CA8 1995), officers arrested Bell for operating a bicycle without a headlight. *Id.*, at 503. Searching him incident to the arrest, the officers found cocaine. *Id.*

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4. *See also New Mexico* v. *Bricker*, 134 P.3d 800, 801-05 (N.M. App. 2006) (finding an arrest that violated state law reasonable under the Fourth Amendment but unconstitutional under the New Mexico Constitution).

Although Bell's arrest violated Iowa law, which allowed only a citation for the offense, the court declined to exclude the evidence because it did "not think Fourth Amendment analysis requires reference to an arrest's legality under state law." *Id.*, at 504.

In examining the question of whether evidence discovered incident to a search illegal under state law must be suppressed under the Fourth Amendment, the Fourth, Fifth, Sixth, Eighth, and Tenth Circuits have each held that a state-law violation alone does not render an arrest or search incident to it unconstitutional. In *United States* v. *Van Metre*, 150 F.3d 339 (CA4 1998), the Fourth Circuit reasoned "[t]hat [whether] an arrest may or may not have been conducted in accordance with . . . state law is irrelevant to our analysis," and declined to "import[] the particularized requirements of state standards . . . ." where the constitutional requirements for arrest warrants were otherwise met. *Id.*, at 347-48. Similarly, the Fifth Circuit found that "the proper inquiry in determining whether to exclude the evidence at issue [in a federal prosecution for possession of methamphetamine for intent to distribute] is not whether the state officials' actions in arresting him were 'lawful' or 'valid under state law.' The question . . . is whether the actions of the state officials in securing the evidence violated the Fourth Amendment." *United States* v. *Walker*, 960 F.2d 409, 415 (CA5 1992) (refusing to exclude evidence where police had probable cause to arrest). *See also United States* v. *Wright*, 16 F.3d 1429 (CA6 1994) (refusing to exclude evidence found in a search incident to an arrest based on probable cause and lawful under the Fourth Amendment, even though Tennessee law exceeded federal constitutional protections).

The Eighth Circuit reaffirmed its approach in *United States* v. *Lewis*, declining to suppress evidence of crack cocaine possession obtained in a search incident to a citation for loitering. 183 F.3d 791, 791 (CA8 1999). Although the arrest violated a Minnesota statute, the court believed that "the appropriate inquiry here [was] not whether Lewis's arrest was valid under Minnesota's criminal procedure statute, but rather under federal law." *Id.*, at 794. Under federal law, the court upheld the arrest and search. *Id.*

The Tenth Circuit also found, when considering a suppression claim based on a state-law flaw in a search warrant, that a state-law violation "is irrelevant as long as the standards developed under the Federal Constitution were not offended." *United States* v. *Le*, 173 F.3d 1258, 1265 (CA10 1999) (quoting *Wright*, 16 F.3d, at 1437).

Although each of these cases involved prosecutions under federal, not State, law, their respective courts' refusal to allow state law to define federal rights still conflicts with the analysis employed by the Virginia Supreme Court and the Ninth Circuit.

In the context of a § 1983 claim, seeking recompense for an allegedly illegal search, the First, Third, Fourth, Seventh, Eighth, and Eleventh Circuits all found state law not to be controlling in defining the alleged constitutional violation. The First Circuit found in *Vargas-Badillo* v. *Diaz-Torres*, 114 F.3d 3, 6 (CA1 1997), that a violation of state law cannot support a claim for illegal arrest under § 1983. It was not disputed that the officers had probable cause to arrest, *id.*, at 5, or that the officers violated a Puerto Rico Rule of Criminal Procedure, *id.*, at 6, but the

First Circuit reasoned that "[m]ere violations of state law do not, of course, create constitutional claims." *Id.*

Similarly, the Third Circuit directly rejected the idea that state law controls the validity of an arrest. In *Anderson* v. *Haas*, 341 F.2d 497 (CA3 1965), the court declared that "[i]t is immaterial whether [the officer's] conduct is legal or illegal as a matter of state law. Here, the plaintiff's claim is based upon an alleged violation of his rights under the Constitution of the United States, and we must look to Federal law to determine whether such violation occurred." *Id.*, at 499. The Fourth Circuit agreed. *Street* v. *Surdyka*, 492 F.2d 368, 371-72 (CA4 1974) (noting that, in a § 1983 action, an officer cannot be liable for a violation of state arrest law "unless he also violated the federal constitutional law governing warrantless arrests" and finding that "[t]he states are free to impose greater restrictions on arrests, but their citizens do not thereby acquire a greater federal right").

The Seventh Circuit reached a similar result when considering a failure to provide a state-required hearing, noting that where an officer "followed the procedures the Constitution prescribes for making arrests, his failure to afford . . . additional procedures established by state law does not matter—not, at least, to a claim under the [F]ourth [A]mendment and § 1983 . . . ." *Gordon* v. *Degelman*, 29 F.3d 295, 301 (CA7 1994); *see also Pasiewicz* v. *Lake County Forest Preserve*, 270 F.3d 520, 526 (CA7 2001) (declining to decide whether an officer's arrest exceeded his state statutory jurisdiction because the state-law violation was not determinative of the constitutional question of the lawfulness of the arrest).

The Eighth Circuit echoed that consensus in *Abbott* v. *City of Crocker*, 30 F.3d 994, 997 (CA8 1994), noting that "[c]onduct by a government official that violates some state statutory or administrative provision is not necessarily constitutionally unreasonable." Although the Eighth Circuit recognized that state law might be relevant to determining whether police conduct was reasonable, it maintained that "evidence seized by state officers in conformity with the Fourth Amendment will not be suppressed in a federal prosecution because *state* law was violated." *Id.*, at 998 (internal citations and quotation marks omitted) (emphasis in original).

Finally, in *Knight* v. *Jacobson*, 300 F.3d 1272 (CA11 2002), the Eleventh Circuit declined to use a violation of a state statute to define a § 1983 action. Knight claimed that his arrest, even if supported by probable cause, violated the Fourth Amendment because Florida law authorizes warrantless arrests only for misdemeanors committed in the officer's presence (his was not). *Id.*, at 1275-76. The Eleventh Circuit held that federal law, not state law, determines a § 1983 violation. *Id.*, at 1276.

Together, these state supreme court and federal circuit decisions demonstrate that the great weight of judicial opinion among the lower courts looks to federal constitutional law, rather than state law, to determine the scope of the Fourth Amendment.

C. The Ninth Circuit, the District of Columbia Circuit, and the Virginia Supreme Court Conflict with the Majority, Holding That State-Law Violations Create Fourth Amendment Violations.

The Supreme Court of Virginia reached the opposite result. Rather than looking to federal law to define federal constitutional rights, the *Moore* decision found that a state-law violation created a constitutional infirmity under the Fourth Amendment. *Moore*, 636 S.E.2d, at 400. The court reasoned that the illegality of the arrest under state law also negated the existence of probable cause in the first place. *Id.* As a result, the court concluded that the evidence must be suppressed under the Fourth Amendment—even though it was obtained in a search incident to an arrest based on *constitutionally* sufficient probable cause—simply because that arrest violated state law. *Moore*, 636 S.E.2d, at 400. Thus, according to the Supreme Court of Virginia, an unlawful arrest under state law, probable cause notwithstanding, requires not a state-crafted remedy, but a federal constitutional solution.

Only the Ninth Circuit, the District of Columbia Circuit, and the Virginia Supreme Court have adopted this position. In *United States* v. *Mota*, 982 F.2d 1384 (CA9 1993), officers arrested the Mota brothers for operating a food cart without a license, and a search incident to arrest revealed counterfeit bills. *Id.*, at 1385. The *Mota* court reasoned that the legality of the arrest and subsequent search turned on state law. *Id.*, at 1387-88. That court recognized that the application of the exclusionary rule in federal court is a matter of federal,

not state, law, but it found that federal courts must consider state law in determining the lawfulness of the search. *Id.*, at 1397 (citing *DeFillippo*, 443 U.S., at 36 (noting that authority to arrest depends "in the first instance, on state law"), and *Di Re*, 332 U.S. 581 (finding a search incident to arrest unlawful where arresting officers lacked authority to arrest under state law)). There—as in *Moore*—an officer had cause to believe that the offenders had broken the law in his presence, yet—again as in *Moore*—state law prohibited police from effectuating a custodial arrest for the offense. *Mota* held that because the arrest violated state law, it was both unreasonable and unlawful under the Fourth Amendment of the United States Constitution. 982 F.2d, at 1389. Thus, *Mota* declared that the evidence found incident to that unlawful search must be suppressed. *Id.*[5]

Similarly, in *Barnett* v. *United States*, 525 A.2d 197 (CADC 1987), the District of Columbia Circuit found that the arrest and search of a pedestrian violating a walking regulation was constitutionally unreasonable. The traffic regulation was a civil infraction for which only a monetary

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5. The extant circuit split is resilient and unlikely to resolve without the Court's intervention. Indeed, the Ninth Circuit recently reaffirmed *Mota*'s holding. *Bingham* v. *City of Manhattan Beach*, 341 F.3d 939 (CA9 2003) (noting that "[i]n evaluating a custodial arrest conducted by state officials, federal courts must determine the reasonableness of the arrest in reference to state law governing the arrest" where an officer violated a California statute prohibiting police from arresting an adult for driving with an expired license) *Id.*, at 949-50 (quoting *Mota*, 982 F.2d, at 1388) (internal quotations omitted)).

penalty could be imposed. *Id.*, at 199. The D.C. Circuit found that the arrest for this misdemeanor was unlawful and that the contemporaneous search that produced narcotics violated the defendant's Fourth Amendment rights. *Id.* Therefore, the court concluded, the evidence must be suppressed. *Id.*

The effect of the rule articulated in each of these cases and is to allow state legislatures the power to change the contours of the Fourth Amendment. *But see Elkins*, 364 U.S., at 223-24 ("The test [for admissibility of evidence] is one of federal law, neither enlarged by what one [S]tate court may have countenanced, nor diminished by what another may have colorably suppressed."). This minority approach has been rejected by a broad spectrum of decisions in other state and circuit courts, creating an irreconcilable conflict between the two.

III. States Will Benefit From a Clear Determination of Their Powers and Responsibilities.

States often choose to create protections greater than those provided under the federal Constitution. But States need certainty as to the intersection of their power to regulate arrests and their ability to craft their own remedies for those violations. Requiring federal law probable cause and constitutionality to turn on state statutes not only injects a needless complexity into the law-enforcement process, *cf. Brinegar* v. *United States*, 338 U.S. 160, 176 (1949) ("The rule of probable cause is a practical, nontechnical conception . . . . Requiring more would unduly hamper law enforcement."), but also would destroy federal uniformity, as the disparate state laws would create disparate federal rights.

The wisdom of the majority position lies in its ability to separate state-created rights from federal constitutional rights. Indeed, this approach accords even greater respect to individual States' powers to provide rights beyond the Constitution by also giving each state the freedom to craft its own remedies for violations of those rights. The melding of state-law regulations into federal constitutional rights undermines the benefits of both: On the one hand, it mandates a uniform remedy for a broad spectrum of state statutory violations; on the other, it allows state laws to create variations in federal constitutional protections.

The majority rule rightly declines to predicate the Fourth Amendment on state-law statutory questions. Rather, it requires the States to assume the responsibility for enforcing their own laws. As such, the majority position maintains both the need for state sovereignty in enforcing state laws and the need for uniformity in the enforcement of federal rights. Both state and federal courts would benefit from the Court's guidance in determining the precise intersection between State and constitutional law in interpreting the Fourth Amendment.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari and reverse the judgment of the Virginia Supreme Court.

Respectfully submitted,

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